



Paycheck Protection Flexibility Act of 2020

Summary of Key Provisions

The Act provides important new flexibility to borrowers in the Paycheck Protection Program ("PPP") in a number of key respects:

Deadline to Use the Loan Proceeds: The Act extends the "covered period" with respect to loan forgiveness from the original eight week period after the loan is disbursed to the earlier of 24 weeks after the loan is disbursed or December 31, 2020. Current borrowers who have received their loans prior to the enactment of the Act may nevertheless elect the shorter eight week period.

Forgivable Uses of the Loan Proceeds: The Act raises the cap on the amount of forgivable loan proceeds that borrowers may use on non-payroll expenses from 25% to 40%. The Act does not affect the PPP's existing restrictions on borrowers' use of the loan proceeds to eligible expenses: payroll and benefits; interest (but not principal) on mortgages or other existing debt, rent, and utilities.

Loan Maturity Date: The Act extends the maturity date of the PPP loans (i.e. any portion of a PPP loan that is not forgiven) from 2 years to 5 years. This provision of the Act only affects borrowers whose PPP loans are disbursed after its enactment. With respect to already existing PPP loans, the Act states specifically that nothing in the Act will "prohibit lenders and borrowers from mutually agreeing to modify the maturity terms of a covered loan."

Safe Harbor for Rehiring Workers: Loan forgiveness under the PPP remains subject to reduction in proportion to any reduction in a borrower's full-time equivalent employees ("FTEs") against prior staffing level benchmarks. The Act extends the PPP's existing safe harbor deadline to December 31, 2020: borrowers who furloughed or laid-off workers will not be subject to a loan forgiveness reduction due to reduced FTE count as long as they restore their FTEs by the deadline.

Forgiveness Reduction Penalty Exemptions: The Act also adds two exemptions to the PPP's loan forgiveness reduction penalties. First, the forgiveness amount will not be reduced due to a reduced FTE count if the borrower can document that they attempted, but were unable, to rehire individuals who had been employees on February 15, 2020 and have been unable to hire "similarly qualified employees" before December 31, 2020. Second, the forgiveness will not be reduced due to a reduced FTE count if the borrower, in good faith, can document an inability to return to the "same level of business activity" as prior to February 15, 2020 due to compliance with HHS, CDC, or OSHA requirements related to sanitation, social distancing, and worker or customer safety requirements.

Loan Deferral Period: The Act extends the loan deferral period to, (a) whenever the amount of loan forgiveness is remitted to the lender or, (b) 10 months after the applicable forgiveness covered period if a borrower does not apply for forgiveness during that 10 month period. Under the unamended PPP, a borrower's deferral period was to be between 6 and 12 months.

Payroll Tax Deferral: The Act lifts the ban on borrowers whose loans were partially or completely forgiven from deferring payment of payroll taxes. The payroll tax deferral is now open to all PPP borrowers.